Brouwer Realty Co. v. Industrial Comm. 266 W 73, 62 NW (2d) 577.

There can be no appeal to the supreme court from any determination of the circuit court in a proceeding for review under ch. 227 except from a final judgment or final order. Ashwaubenon v. Public Service Comm. 15 W (2d) 445, 113 NW (2d) 412.

**227.22 History:** 1943 c. 375; Stats. 1943 s. 227.22; 1949 c. 77; 1953 c. 277; 1955 c. 221 s. 15; 1967 c. 109.

**Committee Note, 1955:** (1) is substantially a restatement of the former 227.22. (2) replaces the complete exclusion, presently contained in the definition of "agency". (Bill 5-S)

**227.24 History:** 1943 c. 375; Stats. 1943 s. 227.24; 1955 c. 221 s. 17.

**227.25 History:** 1941 c. 194; Stats. 1941 s. 261.13; 1943 c. 375; Stats. 1943 s. 227.25; 1945 c. 511; 1969 c. 276 s. 584 (1) (b).

**227.26 History:** 1931 c. 280; Stats. 1931 s. 285.06; 1943 c. 375; Stats. 1943 s. 227.26.

285.06, Stats. 1935, authorizes the attorney general or any department, board, commission or officer sought to be restrained in federal district court, to bring, in the circuit court for Dane county, a suit to enforce any state statute assailed, at any time before the hearing on the application for an interlocutory injunction in the suit in the federal court. Dept. of Agriculture and Markets v. Laux, 223 W 287, 270 NW 548.

285.06, Stats. 1939, does not in any real sense confer jurisdiction of the subject matter of the action that has not already been conferred by the constitution, but prescribes the venue of the action and, in the situations specified, authorizes suit by the proper department, board, commission or officer. Where a foreign insurance company commenced an action in the federal court seeking to restrain the commissioner from enforcing, in accordance with his understanding of them, state statutes regulating the insurance business in Wisconsin, the situation was sufficiently within this section to authorize the commissioner to bring an action thereunder to enforce the state statutes, as against the contention that, since there was no formal order of denial of license by the commissioner at the time the action in the federal court was commenced, there was no attempt by the company to restrain enforcement of any "order" and the contingency on which the commissioner's authority to bring an action never happened. Duel v. State Farm Mut. Auto. Ins. Co. 240 W 161, 1 NW (2d) 887, 2 NW (2d) 871.

## CHAPTER 228.

### Recording and Copying of Public Records in Populous Counties.

**228.01 History:** 1959 c. 399; Stats. 1959 s. 228.01.

**228.02 History:** 1959 c. 399; Stats. 1959 s. 228.02.

**228.03 History:** 1959 c. 399; Stats. 1959 s. 228.03.

**228.04 History:** 1959 c. 399; Stats. 1959 s. 228.04.

**228.05 History:** 1959 c. 399; Stats. 1959 s. 228.05.

**228.06 History:** 1959 c. 399; Stats. 1959 s. 228.06.

## CHAPTER 230.

### Nature and Qualities of Estates in Real Property, and Restrictions on Alienation.

**230.01 History:** R. S. 1849 c. 56 s. 1; R. S. 1858 c. 83 s. 1; R. S. 1878 s. 2025; Stats. 1898 s. 2025; 1925 c. 4; Stats. 1925 s. 230.01; 1969 c. 334.

**Editor's Note:** The legislative histories which follow are the histories of the several sections of ch. 230 through 1969, including the effects of chapters 334 and 339, Laws 1969. Two sections of ch. 230 (230.47 and 230.48) will become part of the probate code, effective April 1, 1971; and various other provisions of ch. 230 are restated in the revised property law, effective July 1, 1971. For more detailed information concerning the efforts of chapters 334 and 339, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 700.

**230.02 History:** R. S. 1849 c. 56 s. 2; R. S. 1858 c. 83 s. 2; R. S. 1878 s. 2026; Stats. 1898 s. 2026; 1925 c. 4; Stats. 1925 s. 230.02; 1969 c. 334.

The words "heirs and assigns" are not necessary to the creation of an equitable servitude which will pass with the land, but the use of those words is a strong indication of the purpose of the grantor although not controlling. Clark v. Guy Drews Post, 247 W 48, 18 NW (2d) 322.

If the deed of cemetery lots conveys an estate in land it conveys an estate of inheritance, which is one in fee simple under 230.02, Stats. 1943, and is assignable; and if such deed does not create an estate in land, the right of burial transferred by it to the grantees is a contractual right, which is a property right and assignable. Feest v. Hillcrest Cemetery, Inc. 247 W 160, 19 NW (2d) 246.

**230.03 History:** R. S. 1849 c. 56 s. 3; R. S. 1858 c. 83 s. 3; R. S. 1878 s. 2027; Stats. 1898 s. 2027; 1925 c. 4; Stats. 1925 s. 230.03; 1969 c. 334.

Where land was devised to trustees to receive rents and profits during the life of the son of the testator and to pay to such son the income during his life and at his death to convey "to his issue then living in fee or in case that he shall die without issue then and in that case the same to descend to my heirs at law then living in fee," there was not created an estate tail in the son. Webber v. Webber, 108 W 626, 84 NW 896.

**230.04 History:** R. S. 1849 c. 56 s. 3; R. S. 1858 c. 83 s. 3; R. S. 1878 s. 2028; Stats. 1898 s. 2028; 1925 c. 4; Stats. 1925 s. 230.04; 1969 c. 334.

**230.05 History:** R. S. 1849 c. 56 s. 5; R. S. 1858 c. 83 s. 5; R. S. 1878 s. 2029; Stats. 1898 s. 2029; 1925 c. 4; Stats. 1925 s. 230.05; 1969 c. 334.

An estate for years in land is a chattel real and is personal property which, on the death of the owner, descends to his administrator or executor and not to his heirs at law. Janura v. Fencl, 261 W 179, 52 NW (2d) 144.

**230.06 History:** R. S. 1849 c. 56 s. 6; R. S. 1858 c. 83 s. 6; R. S. 1878 s. 2030; Stats. 1898 s. 2030; 1925 c. 4; Stats. 1925 s. 230.06; 1941 c. 290; 1969 c. 334.

**230.07 History:** R. S. 1849 c. 56 s. 7; R. S. 1858 c. 83 s. 7; R. S. 1878 s. 2031; Stats. 1898 s. 2031; 1925 c. 4; Stats. 1925 s. 230.07; 1969 c. 334.

**230.08 History:** R. S. 1849 c. 56 s. 8; R. S. 1858 c. 83 s. 8; R. S. 1878 s. 2032; Stats. 1898 s. 2032; 1925 c. 4; Stats. 1925 s. 230.08; 1969 c. 334.

**230.09 History:** R. S. 1849 c. 56 s. 9; R. S. 1858 c. 83 s. 9; R. S. 1878 s. 2033; Stats. 1898 s. 2033; 1925 c. 4; Stats. 1925 s. 230.09; 1969 c. 334.

**230.10 History:** R. S. 1849 c. 56 s. 10; R. S. 1858 c. 83 s. 10; R. S. 1878 s. 2034; Stats. 1898 s. 2034; 1925 c. 4; Stats. 1925 s. 230.10; 1969 c. 334.

A conveyance of land in fee to take effect at a future time is valid, and the fee will vest in the grantee subject to the terms of the conveyance. Ferguson v. Mason, 60 W 377, 19 NW 420.

An inchoate right of dower is not a future estate. It is contingent, vesting only upon the death of the husband, and can only be conveyed or relinquished in the manner provided by statute. Munger v. Perkins, 62 W 499, 22 NW 511.

**230.11 History:** R. S. 1849 c. 56 s. 11; R. S. 1858 c. 83 s. 11; R. S. 1878 s. 2035; Stats. 1898 s. 2035; 1925 c. 4; Stats. 1925 s. 230.11; 1969 c. 334.

**230.12 History:** R. S. 1849 c. 56 s. 12; R. S. 1858 c. 83 s. 12; R. S. 1878 s. 2036; Stats. 1898 s. 2036; 1925 c. 4; Stats. 1925 s. 230.12; 1969 c. 334.

A reversion or vested remainder may be sold to pay legacies which have become a charge thereon, because of the insufficiency of the personal estate to pay them, before the expiration of the precedent estate. The fact that the will devised a part of the premises, including the testator's homestead, as a life estate to his widow does not prevent its sale for such purpose. Will of Root, 81 W 263, 51 NW 435.

The doctrine, that what was formerly known in the law as a "right of entry for condition broken" and now denominated a "power of termination" is a mere right or claim to regain an interest or estate in land on the happening of a condition subsequent, is not accepted by the supreme court as expressing the doctrine fixed in the law of Wisconsin. The common-law rule that possibility of reversion for condition broken cannot be assigned, and that it is extinguished when conveyed, is no longer consistent with the legal thought on the subject. State ex rel. State Historical Society v. Carroll, 261 W 6, 51 NW (2d) 723.

**230.13 History:** R. S. 1849 c. 56 s. 13; R. S. 1858 c. 83 s. 13; R. S. 1878 s. 2037; Stats. 1898 s. 2037; 1925 c. 4; Stats. 1925 s. 230.13; 1931 c. 72 s. 2; 1969 c. 334.

Legacies payable at a future time certain to arrive, and not subject to condition precedent, are deemed vested when there is a person in being at the testator's death capable of taking when the time arrives although his interest is liable to be defeated by his death or to be diminished by future births. Scott v. West, 63 W 529, 24 NW 161, 25 NW 18.

The executors were, by the terms of the will, required to sell parts of the estate and might sell all of the estate and convert it into other real estate, but the corpus of the estate was to remain inalienable during the continuance of the trust. Since the estate was liable to be tied up from 30 to 48 years after the testator's death and during the continuance of at least 4 lives in being at the creation of the estate, the will was void as an illegal restraint upon alienation in this state; but whether it was valid as to real estate in other states does not depend upon the law of this state. The executors took a present vested estate and the son and H. College a future contingent interest. Ford v. Ford, 70 W 19, 33 NW 188.

A devisee who is entitled immediately upon the death of the testator to the right to the possession of the land devised to him upon the ceasing of the estate devised in trust to another has a vested estate which is not defeated by other independent and void clauses in the will. Saxton v. Webber, 83 W 617, 53 NW 905.

A devise to the widow of two-thirds of the estate so long as she should remain a widow, otherwise one-third to "her heir," entitles a posthumous child to a contingent remainder in the third interest; also it gives her one-third. Verrinder v. Winter, 98 W 287, 73 NW 1007.

A devise of a life estate to a testator's wife and, after her death to 4 of his children, creates vested remainders. Smith v. Smith, 116 W 570, 93 NW 452.

Where a testator provided equally for each of his 3 children and gave each one-third of the remainder of his estate subject to the life estate of the mother, such remainder being absolute as to 2 children and in trust for the other, the trustees to pay the income yearly to the son with discretion to pay the corpus of the trust estate in instalments from time to time, the estates in remainder devised to the 2 children were vested, and the trustees took a present vested legal estate in trust for the third child. Williams v. Williams, 135 W 60, 115 NW 342.

A disposition of the rents of certain land to a person for life, and after his death to certain persons during their lives, with directions for sale of the property after the death of the survivor and a division among certain persons is a contingent future estate. In re Adelman's Will, 138 W 120, 119 NW 929.

A will which, after creating the life estate, added "and I hereby devise and bequeath unto the children of my said daughter the remainder of said property after the determination of her said life estate. * * * It is my intention that said property shall be divided at the

death of my daughter among all the children she may have at the time of her decease equally." While the life tenant was living no estate vested in her children. Greeney v. Greeney, 155 W 621, 145 NW 201.

A life estate devised to F. with remainder to his heirs, and if he die without heirs "then to my own heirs at law," vested the remainder in the testator's heirs at the time of his death, and not in his heirs at the time of F's. death. Brown v. Higgins, 180 W 253, 193 NW 84.

A class was created, the members of which were to be ascertained at the death of the life tenant, and estates in remainder were created contingent on the remainderman surviving the life tenant, by a will which gave the testator's wife a life estate in his real and personal property, then directed that upon her death the estate be equally divided between their children, naming them "if they be living, if not to go to their children if they have any living, but if any should have no child or children living, to be equally divided between the remaining child * * * or their children." Estate of Ross: Scott v. Ross, 181 W 125, 194 NW 151.

Where a will, after specific bequests, gave the residue of the testator's estate to a named person in trust to pay the income to testator's widow, and on her death to distribute the trust estate equally among testator's children, the children took a vested interest in the residue, although the enjoyment was postponed. (Cashman v. Ross, 155 W 558, 145 NW 199, insofar as in conflict overruled.) Will of Roth, 191 W 366, 210 NW 826.

The law favors the early vesting of estates, and an estate or interest therein created by will vests at the time of the testator's death unless there is expressed in the will a reasonably clear intention to the contrary. The time of vesting of a postponed legacy depends upon whether merely the enjoyment thereof or the substance of the gift is postponed; where the postponement attaches to the substance the vesting is postponed, but where the postponement relates merely to the enjoyment the gift vests as of the date of the testator's death. Will of Fouks, 206 W 69, 238 NW 869.

Under a will devising a life estate in real estate to the testator's son, and providing that, in the event of the son's decease, the son's wife if living should have the property during her widowhood, and that if she should remarry or die or ceased to occupy the property the estate should vest in fee simple in the son's child or children then living, and that in default of such living child or children the estate should go to other named devisees, the interest of the son's child was only contingent and this contingent remainder could vest only after the termination of his father's life estate and on the termination of his mother's estate, so that, such child having predeceased his father, the remainder never vested in the child, and hence the child's surviving wife had no interest in the property as his heir at law. Malzahn v. Teagar, 235 W 631, 294 NW 36.

Where a will gave a life estate to the testator's widow, and provided that on her death the estate "shall descend" in equal shares to the testator's daughter and son, and to them and their heirs forever, the children of any deceased child to have the share which their parents would have taken if living, the estate in remainder to the testator's daughter and son vested at the death of the testator, although the enjoyment was postponed, and hence, on the death of the testator's daughter without children prior to the death of the testator's widow, the daughter's interest passed to her surviving husband as her only heir at law. (In re Albiston's Estate, 117 W 272; In re Moran's Will, 118 W 177; and Cashman v. Ross, 155 W 558, overruled insofar as in conflict with the rule in Will of Roth, 191 W 366.) Will of Reimers, 242 W 233, 7 NW (2d) 857.

The provision giving the testator's estate remaining "at the time of the death of my wife" to the named executor, and authorizing him to dispose thereof as he saw fit, without any condition in the will that he must be alive when the testator's wife died, did not prevent the estate in the remainder from vesting in the executor during his lifetime, but merely postponed the use and enjoyment thereof, and gave the executor a vested estate on the testator's death although the executor predeceased the testator's widow. Estate of Wadleigh, 250 W 284, 26 NW (2d) 667.

The general rule is that when a will provides for a limitation over to the "heirs" of the testator or of some other person already deceased following a life estate, the determination of the class of persons who qualify as such heirs is to be made as of the date of the death of the testator unless an intent to have such determination made as of the death of the life tenant is found from additional language or circumstances. An incongruity is present if a gift over to heirs following a life estate to the sole heir at law of the testator is to be construed as requiring heirship to be determined as of the date of the death of the testator; in such case, the fact that the life beneficiary is the sole heir of the testator at the date of the death of the testator tends to establish that the testator intended the heirs to be ascertained as of the death of the life beneficiary. Will of Latimer, 266 W 158, 63 NW (2d) 65.

The provisions of 230.13 are contradictory and case law controls in determining whether remainders are vested or contingent. A remainder subject to survival of life beneficiaries is subject to a condition precedent and is contingent. Will of Wehr, 36 W (2d) 154, 152 NW (2d) 868.

**230.14 History:** R. S. 1849 c. 56 s. 14; R. S. 1858 c. 83 s. 14; R. S. 1878 s. 2038; Stats. 1898 s. 2038; 1925 c. 4, 287; Stats. 1925 s. 230.14; 1969 c. 334.

Although the property may be directed to be converted with other property, yet if the estate as a whole is inalienable the absolute power of alienation is suspended. Every future estate, whether vested or contingent, is void in its creation, which suspends the absolute power of alienation for a longer period than that allowed. Ford v. Ford, 70 W 19, 33 NW 188.

A denominational trust in favor of an unincorporated religious society does not suspend the power of alienation. Fadness v. Braunborg, 73 W 257, 41 NW 84.

A will which provides that land devised to

a city shall be perpetually used for specified purposes is void. Beurhaus v. Cole, 94 W 617, 69 NW 986.

The doctrine of Dodge v. Williams, 46 W 70, reiterated in Becker v. Chester, 115 W 90, 91 NW 87, 650, was the law of this state until changed by ch. 287, Laws 1925, making the rule against suspension apply to personal property. Miller v. Douglass, 192 W 486, 213 NW 320.

The trust here construed does not violate the rules against perpetuities and relating to the suspension of the power of alienation, as the parties to the transaction, although numerous, may at any time join in an absolute conveyance of the trust estate. Baker v. Stern, 194 W 233, 216 NW 147.

A devise of real property in trust which provided that the income of the trust estate should be paid to the testator's sister during her life, and that after her death the trust estate should be held for the benefit of her children until they arrived respectively at the age of 30 years, was not invalid as violating secs. 2038 and 2039, Stats. 1909, the latter of which limited suspension of the absolute power of alienation to 2 lives in being at the creation of the estate and 21 years thereafter, where the trustee's power to sell any of the property comprising the trust estate was absolute and the matter rested as wholly within his discretion as if he were in fact the owner in fee simple. Will of Butter, 239 W 249, 1 NW (2d) 87.

The legislature in amending 230.14 in 1925, by adding from the New York statute on alienation the words "Limitations of future or contingent interests in personal property are subject to the rules prescribed in relation to future estates in real property," but not adding a portion forbidding restraint on the absolute ownership of property, did not import into the Wisconsin law such omitted portion of the New York law, but directed Wisconsin courts to apply to future or contingent interests in personal property the prevailing Wisconsin rules applicable to such estates in real property, which are that 230.14 and 230.15 prohibit only the suspension of power to alienate and not the suspension of absolute ownership, and that if a trustee has power to sell, which he may exercise within the time specified by 230.15, the trust is not void under our statutes even though the trust in the converted fund is perpetual. Will of Walker, 258 W 65, 45 NW (2d) 94.

Where a trust was passive in its entirety so that legal title in fee simple to the premises vested in the beneficiaries, subject only to the contingent power of sale in the trustee, a provision against alienation for 20 years unless all beneficiaries consented would be repugnant and void. Janura v. Fencl, 261 W 179, 52 NW (2d) 144.

Perpetuities and the rule of remoteness of vesting. Kehoe, 12 MLR 258.

Restraints on alienation of property held in trust. McClelland, 36 MLR 97.

Distinguishing valid from invalid restraints on alienation of property not held in trust. McClelland, 36 MLR 372.

Wisconsin cases dealing with perpetuities in private trusts. Dede, 42 MLR 514.

Perpetuities under the Wisconsin statutes. Troffman, 2 WLR 14.

**230.15 History:** R. S. 1849 c. 56 s. 15; R. S. 1858 c. 83 s. 15; R. S. 1878 s. 2039; 1887 c. 551; Ann Stats. 1889 s. 2039; 1891 c. 359; 1893 c. 102; Stats. 1898 s. 2039; 1905 c. 511 s. 1; Supl. 1906 s. 2039; 1925 c. 4; Stats. 1925 s. 230.15; 1927 c. 341; 1929 c. 414; 1931 c. 72 s. 2; 1967 c. 59; 1969 c. 334.

No trusts are authorized except those expressly recognized by the statute. Charitable uses, except as retained thereby, are abolished. Ruth v. Overbrunner, 40 W 238, 262.

The English doctrine of perpetuities never applied to trusts for charitable uses, which are essentially permanent. Dodge v. Williams, 46 W 70, 50 NW 1103.

A bequest for a charitable use may be made to a corporation not in esse when the will takes effect, but to be afterwards organized. Gould v. Taylor O. Asylum, 46 W 106, 50 NW 422.

A direction by will to the executors to establish a school from surplus funds does not violate the rule against remoteness in vesting. Webster v. Morris, 66 W 366, 28 NW 353.

Where the corpus of an estate was to be held by the executors to pay annuities to 5 persons for life or until one of them became 40 years of age or certain other contingencies happened, and upon the death of any one of them, his share or annuity was to cease, and not to go to the others, who were still to have the same share as before, the body of the estate was required to be held by the executors for a longer period than permitted by sec. 2039, R. S. 1878, and the will was void as to lands in this state. Ford v. Ford, 70 W 19, 33 NW 188.

An active trust in favor of a religious association is valid under sec. 2039, R. S. 1878. The society may convey or mortgage, and alienation is not suspended. Fadness v. Braunborg, 73 W 257, 41 NW 84.

A devise to the testator's daughter and to her heirs and assigns forever, conditioned that upon her death without issue, the realty devised should descend to the testator's heirs living at the time of the daughter's death unless her husband should survive her, in which event he should be entitled to the same during life or until his remarriage, and upon the happening of either of these events it should descend to the heirs of the testator living at that time, is invalid as to the conditions, because it unlawfully suspends the absolute power of alienation, but the devise itself was valid. Saxton v. Webber, 83 W 617, 53 NW 905.

A devise to the testator's wife for life, with remainder over to his son, and other land to his mother and sister jointly and the survivor of them, with remainder to the son, and a direction that, if the son died without issue living and before majority, as soon after the determination of the life estates as may be, the remainder should be sold and certain legacies paid from the proceeds, is not contrary to sec. 2039, R. S. 1878. Hughes v. Hughes, 91 W 138, 64 NW 851.

A city is not a literary or charitable corporation within the meaning of sec. 2039, R. S. 1878, permitting the absolute suspension of the power of alienation in grants or devises

for such corporations. Beurhaus v. Cole, 94 W 617, 69 NW 986.

A life estate may be reserved by the grantor and a like estate granted to a person then living with a contingent remainder to persons unborn. Tyson v. Houghton, 96 W 59, 71 NW 94.

The absolute power of alienation of real estate is not suspended when a trustee or other donee of the legal title has been given power and authority to sell and make the conveyance of a complete title. Becker v. Chester, 115 W 90, 91 NW 87 and 650.

Where land was devised to trustees to receive the rents, issues and profits during the lifetime of the son of the testator and to pay income to him during his life and at his death to convey the land, it did not suspend the power of alienation for a longer period than the life of the son. Webber v. Webber, 108 W 626, 84 NW 896.

The power of alienation may be suspended for an absolute term not measured by or dependent on a continuance of a life or lives provided such term does not exceed the statutory number of years. The contrary holding in De Wolf v. Lawson, 61 W 469, 21 NW 615, was before the provision as to number of years was inserted in the statute. Kopmeier's Will, 113 W 233, 89 NW 134; Danforth v. Oshkosh, 119 W 262, 97 NW 258.

It has been established in Wisconsin that charitable trusts of personalty will be upheld under the general rules applicable thereto, and the legislature, by the amendment of 1905, extended the same rule to real property. The application of the statute of Elizabeth, and the rule of cy pres, have been clearly settled. Harrington v. Pier, 105 W 485, 82 NW 345; Donges' Estate, 103 W 497, 79 NW 786; Kronshage v. Varrell, 120 W 161, 97 NW 928.

Land conveyed to a municipality for a public park is granted for a "charitable use" and conditions subsequent annexed to the grant are not subject to the rule of the statute relating to the suspension of the power of alienation. Williams v. Oconomowoc, 167 W 281, 166 NW 322.

Both under the laws of New York and Wisconsin the original rule of the common law pertaining to the remoteness of vesting is not involved, and the only question is whether there was an unlawful restraint upon the power of alienation. The New York court in adopting the common-law rule on perpetuities with respect to remoteness of vesting was apparently in error in adopting a rule which required vesting in actual possession and enjoyment. Miller v. Douglass, 192 W 486, 213 NW 320.

A restriction that property donated to a town for monumental purposes should be used perpetually for monumental purposes was not void as unlawful suspension of the power of alienation. Matson v. Caledonia, 200 W 43, 227 NW 298.

A will left the remainder of the testatrix's estate, consisting of cash, bonds and stocks, and a farm not occupied as the family home but rented to tenant farmers, in trust until such time as the youngest of the testatrix's great nephews and nieces should 50 years old, and directed that the "interest" be divided among them every year. The will is construed as meaning "income" in using the word "interest," and as giving to the trustees by implication a discretionary power of sale, as to the real estate as well as to the personal property in the trust estate; because of such power of sale, the absolute power of alienation is not suspended as to either, and there is no violation of 230.14 or 230.15, Stats. 1947, as to either, although the trust itself may endure longer than lives in being at the creation of the estate plus 30 years. Will of Walker, 258 W 65, 45 NW (2d) 94.

Restraints on alienation of property held in trust. McClelland, 36 MLR 97.

**230.16 History:** R. S. 1849 c. 58 s. 55; R. S. 1858 c. 85 s. 55; R. S. 1878 s. 2152; Stats. 1898 s. 2152; 1925 c. 4; Stats. 1925 s. 232.52; 1965 c. 52; Stats. 1965 s. 230.16; 1969 c. 334.

**230.17 History:** R. S. 1849 c. 58 s. 56; R. S. 1858 c. 85 s. 56; R. S. 1878 s. 2153; Stats. 1898 s. 2153; 1925 c. 4; Stats. 1925 s. 232.53; 1965 c. 52; Stats. 1965 c. 230.17; 1969 c. 334.

**230.22 History:** R. S. 1849 c. 56 s. 22; R. S. 1858 c. 83 s. 22; R. S. 1878 s. 2046; Stats. 1898 s. 2046; 1925 c. 4; Stats. 1925 s. 230.22; 1969 c. 334.

There may be many cases in which the courts have held that the expression "death without issue" may mean death without issue born, but that construction has been excluded except when clearly intended by the provisions of sec. 2046, Stats. 1898. In re Korn's Will, 128 W 428, 107 NW 659.

**230.23 History:** R. S. 1849 c. 56 s. 23; R. S. 1858 c. 83 s. 23; R. S. 1878 s. 2047; Stats. 1898 s. 2047; 1925 c. 4; Stats. 1925 s. 230.23; 1969 c. 334.

**230.24 History:** R. S. 1849 c. 56 s. 24; R. S. 1858 c. 83 s. 24; R. S. 1878 s. 2048; Stats. 1898 s. 2048; 1925 c. 4; Stats. 1925 s. 230.24; 1969 c. 334.

**230.25 History:** R. S. 1849 c. 56 s. 25; R. S. 1858 c. 83 s. 25; R. S. 1878 s. 2049; Stats. 1898 s. 2049; 1925 c. 4; Stats. 1925 s. 230.25; 1969 c. 334.

**230.26 History:** R. S. 1849 c. 56 s. 26; R. S. 1858 c. 83 s. 26; R. S. 1878 s. 2050; Stats. 1898 s. 2050; 1925 c. 4; Stats. 1925 s. 230.26; 1969 c. 334.

A bequest is not to be held void on the ground of the probability or improbability of the contingency on which it is limited to take effect. Webster v. Morris, 66 W 366, 28 NW 353.

**230.27 History:** R. S. 1849 c. 56 s. 27; R. S. 1858 c. 83 s. 27; R. S. 1878 s. 2051; Stats. 1898 s. 2051; 1925 c. 4; Stats. 1925 s. 230.27; 1969 c. 334.

**230.28 History:** R. S. 1849 c. 56 s. 28; R. S. 1858 c. 83 s. 28; R. S. 1878 s. 2052; Stats. 1898 s. 2052; 1925 c. 4; Stats. 1925 s. 230.28; 1969 c. 334.

A devise of the estate to the wife of the testator with power to sell, remainder to his children, is in effect a devise to the wife for

life with remainder to his heirs. Jones v. Jones, 66 W 310, 28 NW 177.

**230.29 History:** R. S. 1849 c. 56 s. 29; R. S. 1858 c. 83 s. 29; R. S. 1878 s. 2053; Stats. 1898 s. 2053; 1925 c. 4; Stats. 1925 s. 230.29; 1969 c. 334.

**230.30 History:** R. S. 1849 c. 56 s. 30; R. S. 1858 c. 83 s. 30; R. S. 1878 s. 2054; Stats. 1898 s. 2054; 1925 c. 4; Stats. 1925 s. 230.30; 1969 c. 334.

**230.31 History:** R. S. 1849 c. 56 s. 31; R. S. 1858 c. 83 s. 31; R. S. 1878 s. 2055; Stats. 1898 s. 2055; 1925 c. 4; Stats. 1925 s. 230.31; 1969 c. 334.

**230.32 History:** R. S. 1849 c. 56 s. 32; R. S. 1858 c. 83 s. 32; R. S. 1878 s. 2056; Stats. 1898 s. 2056; 1925 c. 4; Stats. 1925 s. 230.32; 1969 c. 334.

The grantor's delivery to a husband and wife of a deed running to the husband and wife, during the wife's lifetime, and after her death to the children of the husband, parties of the second part, was a delivery to all of the second parties, so that whatever the husband and wife had caused to be vested in the children by such delivery they could not take away from the children. The deed is construed in accordance with the intent and meaning stated and hence to vest title to the premises after the death of the wife in the children. Mathy v. Mathy, 234 W 557, 291 NW 761.

**230.33 History:** R. S. 1849 c. 56 s. 33; R. S. 1858 c. 83 s. 33; R. S. 1878 s. 2057; Stats. 1898 s. 2057; 1925 c. 4; Stats. 1925 s. 230.33; 1969 c. 334.

**230.34 History:** R. S. 1849 c. 56 s. 34; R. S. 1858 c. 83 s. 34; R. S. 1878 s. 2058; Stats. 1898 s. 2058; 1925 c. 4; Stats. 1925 s. 230.34; 1969 c. 334.

**230.35 History:** R. S. 1849 c. 56 s. 35; R. S. 1858 c. 83 s. 35; R. S. 1878 s. 2059; Stats. 1898 s. 2059; 1925 c. 4; Stats. 1925 s. 230.35; 1969 c. 334.

230.35, Stats. 1941, allows the alienation of contingent remainders. First Wisconsin Trust Co. v. Taylor, 242 W 127, 7 NW (2d) 707.

An assignment of an interest in a trust estate which would be payable on the death of the life beneficiary cannot be set aside on the petition of the trustee in bankruptcy of a beneficiary in the absence of fraud. A mere showing of vitiating circumstances is not enough. Estate of Tantillo, 24 W (2d) 19, 127 NW (2d) 798.

**230.36 History:** R. S. 1849 c. 56 s. 36; R. S. 1858 c. 83 s. 36; R. S. 1878 s. 2060; Stats. 1898 s. 2060; 1925 c. 4; Stats. 1925 s. 230.36; 1969 c. 334.

**230.37 History:** R. S. 1849 c. 56 s. 37; R. S. 1858 c. 83 s. 37; R. S. 1878 s. 2061; Stats. 1898 s. 2061; 1925 c. 4; Stats. 1925 s. 230.37; 1957 c. 561; 1969 c. 334.

230.37, Stats. 1925, was not affected by the amendment to 230.14 relating to the suspension of the power of alienation of property; it does not prohibit accumulations of income from personal property or property which must be considered personal, under the doctrine of equitable conversion which doctrine was applied in this case. In re Schilling's Will, 205 W 259, 237 NW 122.

Vesting in the trustees a discretion to pay the income from the trust in question to the testator's son in such amounts and at such times as the trustees deemed proper, until the son arrived at the age of 26 years, when he would be entitled to the entire trust estate, without any express direction to accumulate, did not not call for an accumulation. In general, there is a preference for finding that no accumulation has been provided for. Will of Smith, 253 W 72, 32 NW (2d) 320.

**230.40 History:** R. S. 1849 c. 56 s. 40; R. S. 1858 c. 83 s. 40; R. S. 1878 s. 2064; Stats. 1898 s. 2064; 1925 c. 4; Stats. 1925 s. 230.40; 1969 c. 334.

That the will made no provisions for the disposition of the income from the trust estate except for 2 years following the death of the testator did not make the trust void, since the rents and profits belong to the person presumptively entitled to the next eventual estate. Will of Stack, 214 W 98, 251 NW 470.

A will, devising the real estate in trust to 2 of the testator's 3 sons for the lives of 2 sons named and for 21 years thereafter, and providing that at the termination of the trust the real estate should be divided equally among the sons, is construed as giving the sons who survived one of the named sons a vested remainder in the trust estate, subject to be divested by death prior to the termination of the trust; and the surviving sons were the presumptive owners of the next eventual estate in the trust property. Will of Stack, 222 W 1, 267 NW 284.

A void accumulation of income constituted the residue of the testator's estate undisposed of by the will, and it went to the son and daughter either as intestate property because they were the heirs or to them as the persons presumptively entitled to the next eventual estate to be distributed as realized. Estate of Hustad, 236 W 615, 296 NW 74.

**230.41 History:** R. S. 1849 c. 56 s. 41; R. S. 1858 c. 83 s. 41; R. S. 1878 s. 2065; Stats. 1898 s. 2065; 1925 c. 4; Stats. 1925 s. 230.41; 1969 c. 334.

**230.42 History:** R. S. 1849 c. 56 s. 42; R. S. 1858 c. 83 s. 42; R. S. 1878 s. 2066; Stats. 1898 s. 2066; 1925 c. 4; Stats. 1925 s. 230.42; 1969 c. 334.

**230.43 History:** R. S. 1849 c. 56 s. 43; R. S. 1858 c. 83 s. 43; R. S. 1878 s. 2067; Stats. 1898 s.2067; 1925 c. 4; Stats. 1925 s. 230.43; 1969 c. 334.

If 2 devisees each take the undivided part of the fee, subject to the extinguishment of a life estate, they take in severalty, and the devise to each of them must be regarded as entirely independent of the other devises made and of each other. Saxton v. Webber, 83 W 617, 53 NW 905.

A deed to husband and wife makes them joint tenants and the wife may convey her interest in such property. The common-law rule

that husband and wife take as tenants by the entirety has been abolished by our statutes. Wallace v. St. John, 119 W 585, 97 NW 197.

Joint tenancies are no longer favored in the law, as changes in the law of tenures have to a considerable extent abolished the reasons for their existence. Breitenbach v. Schoen, 183 W 589, 198 NW 622.

Estates by the entirety no longer exist. A note payable to a husband and wife jointly, and in which the husband assigned his interest to a bank, is not free from the bank's claim as constituting an estate by the entirety. Aaby v. Citizens Nat. Bank, 197 W 56, 221 NW 417.

A joint tenancy is not destroyed by one tenant contracting to transfer the whole property to a third person. Kurowski v. Retail Hardware M. F. Ins. Co. 203 W 644, 234 NW 900.

If a transaction, whereby the purchaser of an automobile with her own funds had the title issued in the name of herself and a niece, created a joint tenancy, the subsequent sale of the vehicle by the aunt resulted in a severance, so that each party was entitled to half the proceeds; and if the transaction created a tenancy in common, the same result would be reached. With reference to certain shares of corporate stock purchased by a woman in the names of herself and a niece as joint tenants, the 4 requisite unities were present and a joint tenancy with right of survivorship was created, so that any attempted reservation of the income by the woman would be inconsistent with the nature of the joint tenancy, unless expressly reserved on the stock certificate itself or by written instructions filed with the corporation, and in the absence of such a reservation, each of the parties was entitled to one-half of the dividends from such shares. Zander v. Holly, 1 W (2d) 300, 84 NW (2d) 87.

The relative rights, duties and liabilities among tenants in common. Mietus, 24 MLR 148.

**230.44 History:** R. S. 1849 c. 56 s. 44; R. S. 1858 c. 83 s. 44; R. S. 1878 s. 2068; Stats. 1898 s. 2068; 1925 c. 4; Stats. 1925 s. 230.44; 1969 c. 334.

Secs. 2068 and 2069, Stats. 1919, leave open to inquiry in each case the question whether a conveyance, joint in form, was intended to create a joint tenancy or a tenancy in common; and the facts attending the execution may be considered in ascertaining such intent. Williams v. Jones, 175 W 380, 185 NW 231.

See note to 893.47, citing McLean v. McLean, 184 W 495, 199 NW 459.

A husband and wife contracting to purchase land became joint tenants and could select a homestead from such land. Eaton Center Co-op C. Co. v. Kalkofen, 209 W 170, 244 NW 620.

A deed, the introductory clause of which recited conveyance to 2 persons "and the survivor of either," created an estate in joint tenancy, there being no irreconcilable conflict between such clause and the clause conveying land to grantees, their heirs and assigns. Weber v. Nedin, 210 W 39, 246 NW 307.

Where the grantee refused to accept the deed to him alone and insisted upon having a deed running to himself and wife and such a deed was executed and accepted, it created a joint tenancy. Wanek v. Kott, 228 W 314, 280 NW 304.

Estates by the entirety do not exist. A deed to sisters reciting in the introduction that it was to them "as tenants in the entirety" elsewhere describing the grantees as "the said parties of the second part, their assigns, the survivor, her heirs and assigns forever," created a joint tenancy. In re Richardson's Estate, 229 W 426, 282 NW 585.

230.45 (3), Stats. 1943, modifies the last clause of 230.44, providing that an instrument must "expressly" declare that a joint tenancy is being created, even though the 4 unities are present. Under 230.45 (3), if the language used is such as to "evince" an intent on the part of the grantor to create a joint tenancy, it is a sufficient declaration. Tenants in common as well as joint tenants hold jointly and hence the word "jointly" in a deed does not connote joint tenancy as does the word "survivor." The type of survivorship incident to a tenancy in common for the joint lives of the parties with the remainder in the survivor, which may be created by deed, cannot be destroyed by the act of one of the parties, whereas the right of survivorship incident to a joint tenancy is destroyed by a conveyance by one joint tenant of his interest in the property. Hass v. Hass, 248 W 212, 21 NW (2d) 398, 22 NW (2d) 151.

A land contract naming the purchasers as "R— N— and wife, C— N—, and joint tenants," created a joint tenancy in the purchasers, although C was not in fact the wife of R when the contract was made, and hence on the death of C the property belonged to R as the surviving joint tenant, and C's brother had no claim to an interest therein as C's sole heir at law. Neitge v. Severson, 256 W 628, 42 NW (2d) 149.

With reference to certain shares of corporate stock owned by a woman in her own name and later transferred to the names of herself and a niece as to joint tenants with full rights of survivorship, no joint tenancy was thereby created because there was neither unity of title nor unity of time, but under the circumstances a tenancy in common was created rather than a joint tenancy, with, however, a type of survivorship or indestructible remainder in the survivor. Zander v. Holly, 1 W (2d) 300, 84 NW (2d) 87.

**230.45 History:** R. S. 1849 c. 56 s. 45; R. S. 1858 c. 83 s. 45; R. S. 1878 s. 2069; Stats. 1898 s. 2069; 1917 c. 566 s. 35; 1925 c. 4; Stats. 1925 s. 230.45; 1933 c. 437; 1945 c. 195; 1947 c. 140; 1969 c. 334.

Legacies come within the exception of the statute, and when made to 2 joint legatees, without any words to indicate a severance of their interests, if one die the survivor takes the whole legacy. Farr v. Trustees of Grand Lodge, A. O. U. W. 83 W 446, 53 NW 738.

The exception declared in sec. 2069, R. S. 1878, seems to be applicable only where the joint devise made in trust is of the same estate so devised to 2 or more persons in solido or in common. Saxton v. Webber, 83 W 617, 53 NW 905.

Where a note and mortgage are given to

husband and wife they are held by them in joint tenancy and upon the death of the husband they go to the wife and not to his executor. Fiedler v. Howard, 99 W 388, 75 NW 163.

Circumstances which would have made a husband and wife tenants by entireties at common law will under sec. 2069, Stats. 1898, make them joint tenants with the common law characteristics of such tenancies. A married woman cannot devise her interest in a joint tenancy in such a way as to sever the tenancy. Bassler v. Rewodlinski, 130 W 26, 109 NW 1032.

Conveyance to a husband and wife of lands constituting her share in her mother's estate creates a joint tenancy and the surviving husband becomes the sole owner. Friedrich v. Huth, 155 W 196, 144 NW 202.

Where both husband and wife are the purchasers under a land contract she takes the whole property upon his death. Church v. Nash, 163 W 424, 158 NW 89.

A deed unqualifiedly conveying land to a husband and wife created a joint tenancy; hence deceased wife's heirs were not entitled to partition of land as tenants in common with the husband's second wife as devisee under the husband's will. Haas v. Williams, 218 W 429, 261 NW 216.

A joint tenancy can be severed and the right of survivorship defeated by a joint tenant conveying or alienating his interest, and a joint tenancy does not prevent the legislature from providing that a lien incurred against the interest of a joint tenant with his consent during his lifetime may be enforced against the property following his decease. Goff v. Yauman, 237 W 643, 298 NW 179.

If a severance of a joint tenant's interest is effected either by the joint tenant's voluntary conveyance to a third party, who thereby becomes a tenant in common with the other cotenants, or by such a conveyance to a joint tenant, who becomes the sole owner (if the conveyance is not invalid as to others than the parties thereto), there is severed and destroyed by the conveyance the unity of title and, consequently, the joint tenancy for all purposes, including the right of survivorship. Campbell v. Drozdowicz, 243 W 354, 10 NW (2d) 158.

Once property held by a husband and wife in joint tenancy ceases to be a homestead, the husband can sever the joint tenancy by a conveyance of his interest. Radtke v. Radtke, 247 W 330, 19 NW (2d) 169.

230.45 (3), Stats. 1943, did not apply as to a deed by the owner of real estate to herself and her son of " a life estate as joint tenants during their joint lives and an absolute fee forever in the remainder to the survivor of them," since the grantor could not grant to herself or convey any interest or estate to herself and the unities of time and title were absent, but the deed, althought not creating a joint tenancy, did create a tenancy in common for the joint lives of the parties with a vested remainder in the survivor, and the intent of the parties thereby given effect; and the right of the son to the personal property described in the deed was governed by the same considerations, so that on the death of the mother the son became the sole owner of the personal property. Hass v. Hass, 248 W 212, 21 NW (2d) 398, 22 NW (2d) 151.

The signing of a land contract by a husband and wife for the sale of premises owned by them as joint tenants did not constitute a severance of the joint estate, and the husband's interest in joint tenancy passed to his wife on his death, so that the wife, having signed the land contract of her own free will, was bound by it to execute a warranty deed on payment of the amount of her equity, and her deed would pass her after-acquired title. Simon v. Chartier, 250 W 642, 27 NW (2d) 752.

In 230.45 (3) the words "including any deed in which the grantor is also one of the grantees," added by ch. 140, Laws 1947, were intended to apply to deeds thereafter executed. Moe v. Krupke, 255 W 33, 37 NW (2d) 865.

Where a husband and wife held real and personal property in joint tenancy, and the husband murdered the wife, the husband's right to have an estate of inheritance on the death of his co-tenant became inoperative at the moment of the death which he had caused, and no enlarged estate, in trust or otherwise, vested in him but, instead, the status of the slain wife as joint tenant continued in her administrator and heirs, so that, when the husband died by suicide and his life interest in the property ended, her joint tenancy became her estate of inheritance in the entire property, and her administrator took the personal property and her heirs took the realty, and the husband's administrator and heirs took nothing. The foregoing rule is not an interference with the statutes of descent, as no statutes of descent are involved in the devolution of property held in joint tenancy and the property does not pass to the survivor by inheritance nor according to any laws of descent, nor does such rule work attainder or corruption of blood and forfeiture of estate in violation of the state and federal constitutions. Estate of King, 261 W 266, 52 NW (2d) 885.

No statutes of descent are involved in the devolution of property held in joint tenancy, since the devolution of such property is an incident of joint tenancy, and the property does not pass to the survivor by inheritance nor according to any laws of descent. Estate of King, 261 W 266, 52 NW (2d) 885.

Where the contractual obligations arising out of an auction sale were solely between the plaintiff and the defendant, and did not include the defendant's wife, who was a joint tenant with the defendant in the greater part of the property for which the plaintiff had bid at the sale, the trial court, as against a contention that the defendant's wife was a necessary party in the plaintiff's action for specific performance, properly handled the matter by entering a judgment requiring the defendant to tender proper conveyances if able to do so, and retaining jurisdiction to abate the price, conformably to what was conveyed, or to allow damages for the breach of the contract, if the defendant could not perform. Zuahk v. Rose, 264 W 286, 58 NW (2d) 693.

Postal savings certificates and certificates of preferred stock purchased with funds in a joint bank account of husband and wife, half of which certificates were issued in the name

of the husband and half in the name of the wife, were not held in joint tenancy; and their declarations in the respective wills, that they held their entire estate in joint tenancy, did not create a joint tenancy in such certificates at common law, since the 4 unities necessary to create a joint tenancy were not present; nor did such declarations create a joint tenancy under this section, since the wills did not constitute a "deed, transfer or assignment"; hence the certificates in the individual name of the wife, and constituting her separate property, became a part of her estate on her death. Estate of Gabler, 265 W 126, 60 NW (2d) 720, 61 NW (2d) 823.

After the wife had created a joint tenancy in deposited funds by having the certificates issued payable to her husband and herself, either or survivor, the wife, by virtue of 221.45, had the power to withdraw such funds, but she had no power or right to appropriate and thereby destroy her husband's joint and equal interest therein, and her acts of making withdrawals without the consent of her husband although severing the joint tenancy, did not destroy her husband's interest therein, so that, on her death, the husband was entitled to one half of the withdrawn funds traceable into certificates of deposit and a savings account. Estate of Schley, 271 W 74, 72 NW (2d) 767.

See note to 230.48, citing Zum Brunnen v. Niebuhr, 3 W (2d) 570, 89 NW (2d) 215.

230.45 (1) refers only to 230.44 but it does not mean that items of personalty not specifically excluded, such as a vendor's interest in a land contract, are subject to the converse of the rule stated in 230.44. Estate of Fisher, 22 W (2d) 637, 126 NW (2d) 596.

Joint tenancy in Wisconsin. Landman, 30 MLR 182.

The law of joint tenancy in Wisconsin. Cotter, 39 MLR 110, 40 MLR 92 and 41 MLR 339.

Joint ownership as affected by state and federal tax laws. Laikin, 42 MLR 176.

Estate planning: co-ownership. Effland, 1958 WLR 507.

**230.455 History:** 1945 c. 549; Stats. 1945 s. 230.455; 1947 c. 143; 1949 c. 364; 1951 c. 727 s. 23; 1955 c. 251; 1957 c. 151; 1969 c. 334.

**230.46 History:** R. S. 1849 c. 56 s. 46; R. S. 1858 c. 83 s. 46; R. S. 1878 s. 2070; Stats. 1898 s. 2070; 1925 c. 4; Stats. 1925 s. 230.46; 1969 c. 334.

A condition in a deed to a county that the county "erect thereon, within 5 years, a courthouse for the use of said county, and keep and maintain the same thereon for the space of 10 years," is not merely nominal, but substantial. Pepin County v. Prindle, 61 W 301, 21 NW 254.

**230.47 History:** 1903 c. 362 s. 1; Supl. 1906 s. 2070a; 1925 c. 4; Stats. 1925 s. 230.47; 1929 c. 397; 1945 c. 286; 1949 c. 388; Sup. Ct. Order, 262 W v; 1953 c. 540; 1957 c. 399, 664; 1969 c. 339.

**Editor's Note:** See 1952 comment of Judicial Council under 327.28.

**230.48 History:** 1925 c. 308; Stats. 1925 s. 230.48; 1935 c. 69; 1945 c. 355; 1953 c. 540; 1957 c. 399, 664; 1969 c. 339.

The term "joint tenancy" applies primarily to an estate in land. It has been extended to cover interests in personal property, but when so applied it pertains to rights of ownership in the property itself as distinguished from a right to receive the income from the property. Will of Levy, 234 W 31, 289 NW 666, 290 NW 613.

The incompetency of a joint tenant does not work a severance of the joint estate, and hence a joint tenancy between a husband and wife was not terminated by the incompetency of either and the property passed to the surviving incompetent on the death of the other. Zum Brunnen v. Niebuhr, 3 W (2d) 570, 89 NW (2d) 215.

230.48 (2) and 312.01 do not require an executor to retain joint personal property until final judgment, in the absence of proof that they are needed to pay taxes. Will of Barnes, 4 W (2d) 22, 89 NW (2d) 807.

**230.70 History:** 1963 c. 78; Stats. 1963 s. 230.70; 1969 c. 334.

**230.71 History:** 1963 c. 78; Stats. 1963 s. 230.71; 1965 c. 468; 1967 c. 59; 1969 c. 334.

**230.72 History:** 1963 c. 78; Stats. 1963 s. 230.72; 1969 c. 334.

**230.73 History:** 1963 c. 78; Stats. 1963 s. 230.73; 1969 c. 334.

**230.74 History:** 1963 c. 78; Stats. 1963 s. 230.74; 1969 c. 334.

**230.75 History:** 1963 c. 78; Stats. 1963 s. 230.75; 1967 c. 59; 1969 c. 334.

**230.76 History:** 1963 c. 78; Stats. 1963 s. 230.76; 1969 c. 334.

**230.77 History:** 1963 c. 78; Stats. 1963 s. 230.77; 1969 c. 334.

**230.78 History:** 1963 c. 78; Stats. 1963 s. 230.78; 1969 c. 334.

**230.79 History:** 1963 c. 78; Stats. 1963 s. 230.79; 1969 c. 334.

**230.80 History:** 1963 c. 78; Stats. 1963 s. 230.80; 1967 c. 59; 1969 c. 55, 334.

**230.81 History:** 1963 c. 78; Stats. 1963 s. 230.81; 1967 c. 59; 1969 c. 334.

**230.82 History:** 1963 c. 78; Stats. 1963 s. 230.82; 1967 c. 59; 1969 c. 334.

**230.83 History:** 1963 c. 78; Stats. 1963 s. 230.83; 1969 c. 334.

**230.84 History:** 1963 c. 78; Stats. 1963 s. 230.84; 1969 c. 334.

**230.85 History:** 1963 c. 78; Stats. 1963 s. 230.85; 1969 c. 334.

**230.86 History:** 1963 c. 78; Stats. 1963 s. 230.86; 1969 c. 334.

**230.87 History:** 1963 c. 78; Stats. 1963 s. 230.87; 1969 c. 334.

**230.88 History:** 1963 c. 78; Stats. 1963 s. 230.88; 1969 c. 334.

**230.89 History:** 1963 c. 78; Stats. 1963 s. 230.89; 1969 c. 334.

**230.90 History:** 1963 c. 78; Stats. 1963 s. 230.90; 1969 c. 334.

**230.91 History:** 1963 c. 78; Stats. 1963 s. 230.91; 1969 c. 334.

**230.92 History:** 1963 c. 78; Stats. 1963 s. 230.92; 1969 c. 334.

**230.93 History:** 1963 c. 78; Stats. 1963 s. 230.93; 1969 c. 334.

**230.94 History:** 1963 c. 78; Stats. 1963 s. 230.94; 1969 c. 334.

**230.95 History:** 1963 c. 78; Stats. 1963 s. 230.95; 1969 c. 334.

**230.96 History:** 1963 c. 78; Stats. 1963 s. 230.96; 1969 c. 334.

**230.97 History:** 1963 c. 78; Stats. 1963 s. 230.97; 1969 c. 334.

## CHAPTER 231.

### Uses and Trusts.

**231.01 History:** R. S. 1849 c. 57 s. 1; R. S. 1858 c. 84 s. 1; R. S. 1878 s. 2071; Stats. 1898 s. 2071; 1925 c. 4; Stats. 1925 s. 231.01; 1969 c. 283.

**Editor's Note:** The legislative histories which follow are the histories of the several sections of ch. 231 through 1969, including the effects of ch. 283, Laws 1969. One section of ch. 231 (231.45) is restated in ch. 710 (as 710.05) effective July 1, 1971; and various other provisions of ch. 231 are restated in the revised property law, effective July 1, 1971. For more detailed information concerning the effects of ch. 283, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 700.

Charitable uses and trusts, except as authorized and limited by ch. 84, R. S. 1858, are abolished. Ruth v. Oberbrunner, 40 W 238.

Notwithstanding the language of a trust in favor of a religious organization, giving property a "denominational impress," is valid under sec. 2000, R. S. 1849. Fadness v. Braunborg, 73 W 257, 41 NW 84.

A trust is not void because of any obscurity which may readily be made certain by some definite test therein provided when the time shall have arrived for executing the trust in regard to the matters involved. Becker v. Chester, 115 W 90, 91 NW 87, 650.

If any person receive a deposit of money to be used in purchasing land to be held by him upon a charitable trust for a class and he fails to have the trust expressed in the deed and such failure be subsequently acquiesced in by the depositor, no trust results and the depositor has no remedy but a recovery of the money. Richtman v. Watson, 150 W 385, 136 NW 797.

Some of the essential elements of a valid trust and the distinction between a trust and an agency are stated and illustrated in Warsco v. Oshkosh S. & T. Co. 183 W 156, 196 NW 829.

The original statute of uses did not execute uses of personal property. Estate of Hart, 187 W 629, 205 NW 386.

An enforceable trust can be created without a writing; there is no statute in Wisconsin otherwise providing. Hartman v. Loverud, 227 W 6, 227 NW 641.

In construing a trust instrument the language should be so construed as to give effect to the intention of the testator or settlor, if that intention may be ascertained from the language of the instrument, considered in the light of the surrounding circumstances. Findings of fact made by a trial court, in controversies concerning the administration of a trust estate, are accorded the same effect that findings of fact are accorded in other controversies, and hence will not be disturbed on appeal unless they are against the great weight and clear preponderance of the evidence. Welch v. Welch, 235 W 282, 290 NW 758, 293 NW 150.

Although a transfer of the property to a trustee may be the surest way to create a trust, the same result will be accomplished if the owner declares that he himself holds the property in trust for the person designated. Evidence, consisting in part of letters written by a second wife to her attorney and to the mother of the children of her deceased husband by a former marriage, and disclosing that the second wife had segregated and set apart the sum of $5,000 as a trust fund for the education and maintenance of such children, warranted a determination that the second wife had created a binding and enforceable, self-declared trust in and to such sum with herself as trustee, so that on her death such trust sum was not to be withheld by her executors as an asset of her estate. Wyse v. Puchner, 260 W 365, 51 NW (2d) 38.

A trust is created when the title to the subject matter thereof passes to the intended trustee by delivery thereof or of a deed of conveyance to him or to a third person; but if the third person is an agent of the transferor and in receiving delivery acts only as his agent, no trust is created since the property is still within the dominion of the donor. In order to constitute an effectual delivery, the donor must not only have parted with the possession of the property, but he must also have relinquished to the donee all present and future dominion and control over it, beyond any power on his part to recall. Wuesthoff v. Dept. of Taxation, 261 W 98, 52 NW (2d) 131.

In construing statutory provisions relating to trusts adopted from another state, the Wisconsin supreme court may turn to decisions of courts of such other state construing the same or similar statutory provisions. Janura v. Fencl, 261 W 179, 52 NW (2d) 144.

**231.02 History:** R. S. 1849 c. 57 s. 2; R. S. 1858 c. 84 s. 2; R. S. 1878 s. 2072; Stats. 1898 s. 2072; 1925 c. 4; Stats. 1925 s. 231.02; 1969 c. 283.

**231.03 History:** R. S. 1849 c. 57 s. 3; R. S. 1858 c. 84 s. 3; R. S. 1878 s. 2073; Stats. 1898 s. 2073; 1925 c. 4; Stats. 1925 s. 231.03; 1969 c. 283.

A conveyance to one in trust for and to the use of another, without further expression of